

# “Slavery All the Time, Or Not At All”

## The Wyandotte Constitution Debate, 1859–1861

by Gary L. Cheatham

Slavery in Kansas was controversial from the moment the Kansas–Nebraska Act was conceived. This controversy continued throughout the territorial period as two debates were waged simultaneously over the slavery question in Kansas. One debate, which at times turned bloody, was waged in Kansas Territory between proslavery and antislavery settlers. The second, more influential, debate was a national dispute fought largely on the floors of an irresolute Congress over whether the national government had the authority to prescribe the expansion of slavery into Kansas. Fuel for the ongoing congressional debate was replenished by the Supreme Court in 1857 when it handed down its infamous Dred Scott decision. Proslavery members of Congress interpreted Dred Scott to support the view that “Congress cannot prohibit slavery in a Territory,” while congressmen opposed to the expansion of slavery concluded that the Supreme Court “had no jurisdiction” in the matter.<sup>1</sup> As a dispassionate Costa Rican diplomat accurately reported in 1858, the perpetual



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1. “Kansas A Slave State,” *De Bow’s Review* 20, 2d ser. (January 1856): 741–43; *Charleston (S.C.) Mercury*, February 28, 1860; Stephen A. Douglas, *The Dividing Line Between Federal and Local Authority* (New York: Harper and Brothers, 1859), 28–29; H.M. Flint, *Life Of Stephen A. Douglas*, authorized ed. (Philadelphia: John E. Potter, 1863), 162–64; James Byrne Ranck, *Albert Gallatin Brown: Radical Southern Nationalist* (New York: D. Appleton-Century Co.,



quarrel over “the bloody question in Kansas” was caused by a “weakened” Congress caught up in an endless debate over whether to “extend at any cost the area of the institution of slavery.”<sup>2</sup>

In the summer of 1859 the emergence of the anti-slavery Wyandotte Constitution set the stage for the

1937), 166; John G. Parkhurst, *Official Proceedings of the Democratic National Convention, Held in 1860, At Charleston and Baltimore* (Cleveland: Nevins' Print, 1860), 62; George Ticknor Curtis, *The Just Supremacy of Congress Over the Territories* (Boston: A. Williams and Co., 1859), 42.

2. L. Molina and N. Escalante to Nasario Toledo, March 3, 1858, *Correspondencia de Luis Molina y Napoleon Escalante con Nasario Toledo en 1858*, No. 8, Archivo Nacional, San Jose, Costa Rica.

eventual dissolution of the “peculiar institution” in Kansas. The Wyandotte Constitution also played a role in changing the nature of the political debate in Kansas, from an almost singular focus on slavery to a broader struggle between pro-Northern and pro-Southern politics. As this article will demonstrate, what we might call a “pro-Southern opposition” to the principles of the constitution persisted until statehood day, January 29, 1861.

Between 1855 and 1858 Kansans attempted to resolve the slavery dispute with referendums on three

# ANTI-SLAVERY MASS MEETING!

Agreeably to a call, signed by about 80 persons, and published in the Lawrence Republican, a Mass Meeting of the Friends of Freedom will be held at Miller's Hall, at 8 o'clock P. M., on Friday Nov. 24, the day on which

**CAPT. JOHN BROWN IS TO BE EXECUTED,**  
To testify against the heinous SLAVE POWER that rules the Nation, and take steps to

**Organize the Anti-Slavery Sentiment**

of the community. Arrangements have been made with prominent speakers to be present and address the meeting.

For names of contributors of Anti-Slavery, see page 24, 1859.

Looking back on the struggle over the various Kansas constitutions, Governor Charles Robinson commented in 1861, "The necessity for so much Constitution-making and strife as Kansas has experienced during the past six years, has been caused chiefly by the question of Slavery."<sup>4</sup> Naturally, then, many free-state Kansans hoped in 1859 that the adoption of the antislavery Wyandotte Constitution by a majority of voters would resolve the slavery debate. However, with the existence of slavery as early as the 1840s in the area that would become Kansas, and with so much internal strife over slavery in the 1850s, the political struggle would not easily fade.<sup>5</sup>

In the summer and fall of 1859 Kansans knew, like it or not, that slaves were being held in the territory. On September 15, 1859, the Lawrence Republican refuted claims by "Northern Democrats" that slavery had vanished in Kansas. "These men insist that Kansas is a Free State, that slavery does not exist upon our soil. How do they reconcile this with the fact that slavery is already here—exists in fact, whether legal or not, in Douglas county 'the hot bed of abolitionism,' as the pro-slavery men term it." The newspaper included a report on a handbill that was circulating, offering a reward for the return of six runaway slaves to Dr. E.D. Roberts of Leocompton. On September 22, 1859, the Lawrence Republican also reported, "One of our Supreme Judges, Rush Elmore, is, and has been a Slave-holder."<sup>6</sup>

different constitutions. The first effort was that of the "Topeka movement," which produced the antislavery Topeka Constitution of 1855. This free-state document twice failed to gain acceptance by Congress because proslavery voters boycotted the referendums and because it was the product of an extralegal assembly. Efforts on behalf of the proslavery Leocompton Constitution, with referendums in December 1857 and January 1858, also failed largely because various boycotts by antislavery and proslavery voters did not convince Congress of the legitimacy of the document. When, in the spring of 1858, Congress resurrected the Leocompton Constitution with the English bill and sent it back to the voters of Kansas, "little interest was manifested," and Kansans again rejected the proslave instrument in August 1858. In the meantime another antislavery document, the so-called Leavenworth Constitution, was proposed. This document was accepted by a majority of Kansas voters in May 1858 but ultimately failed to gain congressional favor. Subsequently, during the summer of 1859 work began on the Wyandotte Constitution.<sup>3</sup>

3. Gunja SenGupta, *For God and Mammon: Evangelicals and Entrepreneurs, Masters and Slaves in Territorial Kansas, 1854–1860* (Athens: University of Georgia Press, 1996), 130–38; Letter of James B. Foley to the People of

the Fourth Congressional District of Indiana, Washington, February 19, 1859 (Washington, D.C.: James B. Foley, 1859); *Slavery-Limitation Abandoned in Theory and Practice, By the Defenders of The Crittenden-Leocompton Compromise* (New York: American Abolition Society, 1858), 28.

4. Kansas House Journal, March 1861, 36.

5. Wilson Hobbs, "The Friends' Establishment in Kansas Territory," *Kansas Historical Collections*, 1903–1904 8 (1904): 254; Appendix to the Congressional Globe, 36th Cong., 1st sess., 1860, 210; Gary E. Moulton, ed., *The Papers of Chief John Ross* (Norman: University of Oklahoma Press, 1985), 2:397.

6. Lawrence Republican, September 15, 22, 1859. Judge Elmore resided at Tecumseh, Kansas Territory. See Elmer LeRoy Craik, "Southern Interest in Territorial Kansas, 1854–1858," *Kansas Historical Collections*, 1919–1922 15 (1923):345; Lawrence Daily Journal–World, March 13, 1933; U.S. Department of the Interior, Eighth Census of the United States, 1860: Population (Washington, D.C.: Government Printing Office, 1864), 160–61.

Although slavery continued in Kansas Territory, anti-slavery voices had become dominant by early 1857. As proponents of slavery “found that Kansas was slipping from their clutches,” proslavery partisans discovered that merging with the sympathetic Democratic Party was their only remaining political refuge.<sup>7</sup> The Atchison Squatter Sovereign reported on this merger by publishing the comments of one proslavery Kansas Democrat who wrote, “I have not sold my pro-slavery principles.

When the National democratic platform was adopted by our party, and I accuded [sic] to it, I did not by that act, surrender my right, to aid in making Kansas a Slave State.” He continued by urging his fellow pro-Southern Democrats to “quietly discuss the propriety of recognizing or excluding slavery from Kansas.” By 1859 proslavery members of the Democratic Party found that accepting moderation meant replacing their hopes for slavery with a broader pro-Southern political platform. As such, much of the opposition to the growing pro-Northern political movement assumed a pro-Southern rather than proslavery political stance. In September 1859 the Lawrence Republican reported on the existence of a pro-Southern organization that counted “about 2,700 Southern men in Kansas” among its ranks. As late as 1860 pro-Southern politics continued to influence local elections.<sup>8</sup>

7. *The West, Its Destiny and Its Duty: Speech Delivered by William H. Seaward, At Dubuque, September 21, 1860* (n.p., n.d.), 11.

8. *Squatter Sovereign* (Atchison), September 5, 1857; *Kansas Constitutional Convention: A Reprint of the Proceedings and Debates of the Convention Which Framed the Constitution of Kansas, at Wyandotte in July 1859* (Topeka: Kansas State Printing Plant, 1920), 179; *Annual Report of the American Anti-Slavery Society, By the Executive Committee, For the Year Ending May 1, 1859* (New York: American Anti-Slavery Society, 1860), 4; *La Cygne Weekly Journal*, March 8, April 19, 1859; *Lawrence Republican*, September 29, 1859; Benjamin F. Simpson, “The Wyandotte Constitutional Convention,” *Kansas Historical Collections* 1, 2 (1881): 245; *New York Times*, August 30, 1859; Leverett W. Spring, *Kansas: The Prelude to the War for the Union* (Boston: Houghton, Mifflin and Co., 1885), 263; *Freedom’s Champion* (Atchison City), October 1, 1859; William G. Cutler and Alfred T. Andreas, *History of the State of Kansas* (Chicago: A.T. Andreas, 1883), 1:114–16, 172.



An 1859 report from the commissioner of claims, which presented information on proslavery and free-state claims for property destroyed during the 1856–1857 territorial civil war, serves to further illustrate the extent of the pro-Southern presence in Kansas in 1859. Of 487 claims, nearly 17 percent of the claimants registered themselves as proslavery, and 21 percent of the total dollar amount of the financial claims was attributed to property owned by proslavery settlers.<sup>9</sup> That nearly one of every six claimants freely identified himself as proslavery illustrates the endurance of the pro-Southern minority in Kansas Territory.

Even during the height of Bleeding Kansas, most pro-Southern Kansans chose political avenues instead of force to express their views. For example, in 1856 Douglas County slaveowner Morton Bourn reported to Congress, “I own slaves, and have a crop of corn and wheat growing; have never taken any active part with the pro-slavery party—only voted and sustained the law.”<sup>10</sup> As a result many free-state Kansans welcomed their proslavery neighbors. In 1858 one free-state Kansan reported, “The quiet, peaceable Pro-Slavery man has nothing to fear from us; he may

9. *Kansas Territory House Journal*, 1860, 503–19.

10. *House, Reports of Committees of the House of Representatives: Kansas Affairs, 34th Cong., 1st sess, 1856, H. Rept. 200, serial 869, 1181–82.*



Lecompton Constitution

Hotly debated issues at the Wyandotte Convention included the state boundary question, the capitol site, the homestead-exemption question, whether to restrict free black immigration, and various issues concerning the design of the legislature. The debate outcome over the state boundary question left the Democrats particularly displeased with their failure to cause the Wyandotte Constitution to force the annexation of Democrat-dominated southern Nebraska Territory. Considering the time spent on these

remain among us, and enjoy his political opinions unmolested.”<sup>11</sup>

Emerging from this political framework, the Wyandotte Constitutional Convention met at Wyandotte [later Kansas City, Kansas] in the summer of 1859. One of the most significant aspects of the convention is that it marked the first time Kansas Republicans squared-off against their Democratic counterparts. Of interest also is that six of the fifty-two convention delegates had been born in slave states. Although nativity alone did not determine political views at the convention, the presence of only six delegates with slave-state origins was disproportionate in relation to the Southern-born population of Kansas.<sup>12</sup> Likewise the Democrats were underrepresented, in part because “in many counties” they did not “contest the canvass for delegates to the Wyandott [sic] Convention.”<sup>13</sup> This make-up profoundly affected how the constitution would treat both slavery and the political future of Kansas.

11. William P. Tomlinson, *Kansas in Eighteen Fifty-eight: Being Chiefly a History of the Recent Troubles in the Territory* (New York: H. Dayton, 1859), 134.

12. Joseph G. Waters, “The Wyandotte Convention: Fifty Years of the Wyandotte Constitution,” *Kansas Historical Collections*, 1909–1910 11 (1910): 48–49; Simpson, “The Wyandotte Constitutional Convention,” 236–38; *Kansas Constitutional Convention*, 14. Although the Democrats represented Southern political interests at the convention, most were not natives of the South. Also, five of the six Southern-born delegates were natives of the border state of Kentucky. This was not representative of the Southern-born population of Kansas, which came from nearly every corner of the South.

13. *Herald of Freedom* (Lawrence), October 1, 1859.

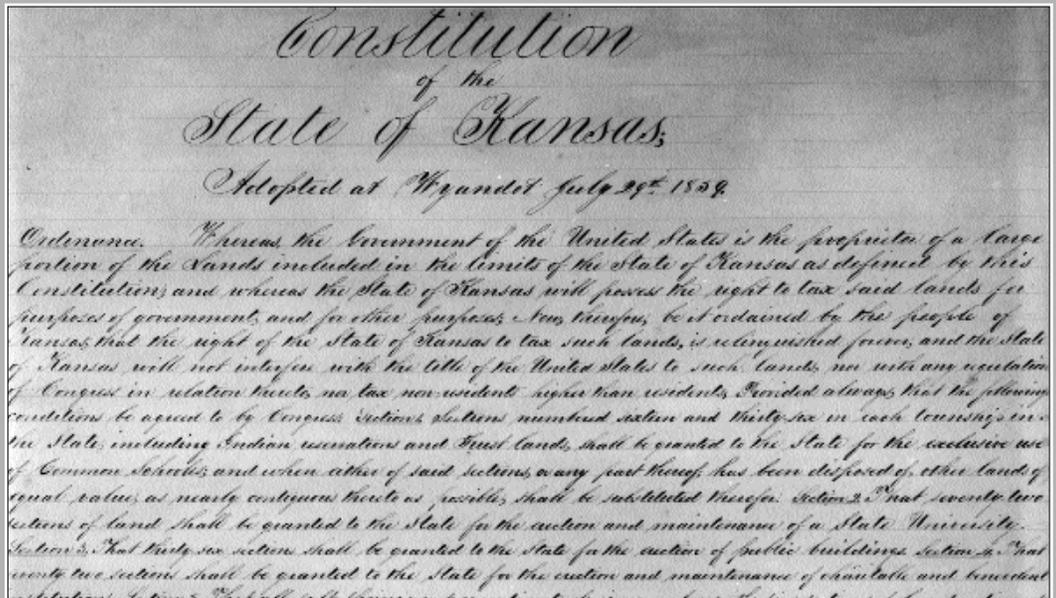
issues, the discussion of slavery was brief. One of the few statements made at the convention in support of slavery came from Robert C. Foster of Delaware Township, Leavenworth County, who reported that he had been instructed by his constituents to support a proslavery clause in the constitution.<sup>14</sup>

The only slavery issue that was debated seriously was whether it would be outlawed on the day Kansas became a free state or if “slave-holders” would be given “a reasonable time for removing their slaves from Kansas.”<sup>15</sup> In an attempt to respond to this concern, Leavenworth delegate Samuel A. Stinson, a Maine native, proposed that the constitution legally protect slavery for one year following statehood. Immediate opposition to this proposal came from pro-Northern political leaders, who charged that the adoption of such a provision could be used to delay the total demise of slavery. The Lawrence Republican reported: “The old pro-slavery leaders. . . hate a Free State, and want to keep Kansas a slave Territory as long as possible.” The White Cloud *Kansas Chief* added that the proslavery proposal was a Democratic effort to keep the Kansas slavery question unresolved. The report continued by stating that Democratic dele-

14. *Kansas Constitutional Convention*, 492; Simpson, “The Wyandotte Constitutional Convention,” 245. For a survey of the issues facing the Wyandotte Convention, see G. Raymond Gaeddert, *The Birth of Kansas* (Topeka: State Printer, 1940), 44–71.

15. *Herald of Freedom*, August 20, 1859.

gate John W. Forman of Doniphan County broke ranks with the Democrats by supporting the minority position of wanting “Slavery all the time, or not at all.” However, having only Democratic support, the proposal to provide even short-term protection for slavery failed to become part of the constitution. The lack of any protection for slavery under the Wyandotte Constitution was noted with alarm in the South.<sup>16</sup>



Wyandotte Constitution

The convention debate over the constitutional document ended on July 29, 1859, when the Wyandotte Constitution was approved by thirty-four of the forty-seven voting delegates. The Democrats, who represented the minority position in the vote, publicly stated their opposition to the constitution on the grounds that it was an instrument of the Republicans.<sup>17</sup> The Democrats also opposed the document because it would “open the gates for an influx of free negroes from Missouri, Arkansas, the Indian Territory and Texas.” Having been liberally modeled after mostly Northern state constitutions, especially that of Ohio, the pro-Southern Kansas minority had good reason to oppose the document.<sup>18</sup>

By discarding slavery, the Wyandotte Constitution appealed to many but not all supporters of the free-state movement. Partly growing out of the Topeka statehood movement, the political views held by

free-state proponents may best be described as generally falling into one of the following three types. The first, as noted by the Fort Scott Democrat, included some “Democrats of the Territory and the conservative portion of the Republicans” who wanted a “free white state” that excluded both slaves and free blacks. The second comprised some free-state Kansans who preferred a free state over slavery but could accept slavery if it were imposed upon Kansas. The third was made up of some free-state Kansans who wanted a strictly free Northern state that welcomed free black immigration.<sup>19</sup>

To further blur the political lines, by 1859 the Democrats were welcoming former members of both the Free State and proslavery parties into their ranks. The Republicans, of course, were fully aware of this effort and in September 1859 even suggested that the “members of the old pro-slavery party of 1855–6” still wanted, via the Democratic Party, to make

16. Kansas Constitutional Convention, 492; Lawrence Republican, September 29, 1859; Kansas Chief (White Cloud), September 29, 1859; Daily Picayune (New Orleans), August 5, 1859.

17. Kansas Constitutional Convention, 570; Herald of Freedom, September 24, 1859; Simpson, “The Wyandotte Constitutional Convention,” 245; Freedom’s Champion, August 6, October 1, 1859; Emporia News, September 3, 1859; Gaeddert, The Birth of Kansas, 65.

18. Fort Scott Democrat, March 1, 1860; Rosa M. Perdue, “The Sources of the Constitution of Kansas,” Kansas Historical Collections, 1901–1902 7 (1902): 150–1.

19. Fort Scott Democrat, January 27, August 18, September 8, 1859; James C. Malin, “The Topeka Statehood Movement Reconsidered: Origins,” in Territorial Kansas: Studies Commemorating the Centennial (Lawrence: University of Kansas Publications, 1954), 57; Democratic National Committee, The Issue Fairly Presented: The Senate Bill for the Admission of Kansas as a State (Washington, D.C.: Union Office, 1856), 13; Simpson, “The Wyandotte Constitutional Convention,” 245.

## ARTICLE VII.—Slavery.

**SECTION 1.** The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same, and as inviolable as the right of the owner of any property whatever.

**Sec. 2.** The legislature shall have no power to pass laws for the emancipation of slaves without the consent of the owners, or without paying the owners previous to their emancipation a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to the State from bringing with them such persons as are deemed slaves by the laws of any one of the United States or

Lecompton Constitution

Kansas a slave state. The New York Times reported that “many of the old border ruffian chiefs” controlled the Kansas Democratic Party. The Lawrence Republican added, “The Democratic party is the tool of the slave power.”<sup>20</sup> Contrary to Republican views, however, not all Democrats were champions of slavery.

In spite of the continuing slavery debate, the institution had little future in Kansas following the failure of the English bill in 1858. Referring to the English bill, the Fort Scott Democrat reported: “As a practical question, the alternative of slavery or no slavery have [sic] been decided.”<sup>21</sup> Nevertheless the issue continued to divide the Democratic Party.

One of the most noticeable divisions existed between supporters of President James Buchanan and fellow Democrat senator Stephen A. Douglas. Southern Democrats naturally sided with Buchanan’s sympathetic view toward slavery in Kansas, while Northern “Douglas” Democrats, committed to the principles of popular sovereignty, generally supported the freestaters because they were clearly in the majority by this point in time. But not all Democrats neatly fit into either the Buchanan or Douglas camp. Membership of the

20. SenGupta, *For God and Mammon*, 137; Rosetta B. Hastings, *Personal Recollections of Pardee Butler* (Cincinnati: Standard Publishing Co., 1889), 51; Topeka Daily Capital, February 12, 1897; Emporia News, September 3, 1859, June 16, 1860; New York Times, September 10, 1859; Lawrence Republican, July 21, 1859.

21. Fort Scott Democrat, September 16, 1858.

the “doctrine of ‘non-interference’ with slavery” in Kansas while it remained a territory.<sup>23</sup> Southern Democrats, however, successfully enlisted many Northern Democrats by convincingly equating “the principles of the Republican party . . . with Abolitionism.” When abolitionists began identifying themselves with the Republican Party, it became easier for the Southern Democrats to obtain support from their Northern Democratic associates. Fear of the Republican brand of Northern politics in essence served as a glue to bring Northern and Southern Democrats together.<sup>24</sup>

When considering that the Wyandotte Constitution was largely the creation of Republican politics, it is not difficult to understand why Southern Democrats and their Northern Democratic supporters opposed the document. In recognition of this position, the Emporia News suggested that anyone who was “a fierce opposer [sic] of the Wyandotte Constitution” had previously been “an ardent supporter of the

22. Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 200; T.F. Robley, *History of Bourbon County, Kansas, To the Close of 1865* (Fort Scott, Kans.: 1894), 52; H. M’Bride Pridgen, *Address to the People of Texas, On the Protection of Slave Property* (Austin: John Marshall and Co., 1858), 6, 8.

23. Proceedings of the Massachusetts National Democratic Convention (Boston: Boston Post, 1860), 59.

24. *Liberator* (Boston), September 16, 1859; Joel H. Silbey, “The Surge of Republican Power: Partisan Antipathy, American Social Conflict, and the Coming of the Civil War,” in *Essays on American Antebellum Politics, 1840–1860*, ed. Stephen E. Maizlish and John J. Kushma (College Station: Texas A&M Press, 1982), 212; James Brewer Stewart, *Holy Warriors: The Abolitionists and American Slavery*, rev. ed. (New York: Hill and Wang, 1996), 178.

Southern Democrats also was graded, running from those who were somewhat sympathetic to slavery to those who fervently called for Kansas to become a slave state.<sup>22</sup> On the other hand, Northern Democrats generally preferred free-state politics but opposed radical abolitionism and supported

Lecompton Constitution.” The Lawrence Republican added that the “pro-slavery spirit” in Kansas comprised the most “bitter opposition” to the constitution. Following the failure of the Lecompton Constitution, however, most Southern Democrats realized the folly in attempting to make Kansas a bastion for slavery and instead worked with Northern Democrats in an effort simply to save “the State from the despotic rule of Abolitionists and Black Republicans.”<sup>25</sup>

Republican voters comprised a small majority in Kansas Territory as evidenced by the November 1859 election for delegate to Congress.<sup>26</sup> Organized in May 1859 and referred to by the Republican National Convention in 1860 as “one of the strongest and best united organizations in the Republican party,” the Kansas Republican Party superseded the largely defunct Free State Party. In assuming the antislavery banner, the Republicans were viewed as “emphatically a Northern party.”<sup>27</sup>

Isolated from the North, however, the Kansas Republican leadership complained in September 1859 that the party had difficulty obtaining “material aid” from its Northern “friends.”<sup>28</sup> And despite the ap-

pearance of harmony, friction between moderate free-state and abolitionist elements left the Kansas Republicans somewhat divided. The Lawrence Herald of Freedom reported “dissatisfaction with the Wyandott [sic] Constitution,” and added that “Conservative Republicans are quite as much opposed to it as the Democrats” because they believed the document favored only a minority of the Republican leadership. The Wyandotte Weekly Western Argus summarized this minority position by stating that when the Topeka Constitution was presented in 1855, “there were scarcely as many inhabitants as there will be office-holders under the Wyandotte Constitution.” Calling upon both Republicans and Democrats, the Herald of Freedom announced a planned “Mass Convention of all those opposed to the Wyandott [sic] Constitution . . . to be held at Olathe.”<sup>29</sup>

25. Emporia News, September 10, 1859; Lawrence Republican, September 22, 1859; Kansas State Rights: An Appeal to the Democracy of the South, By a Southern State-Rights Democrat (Washington, D.C.: Henry Polkinhorn, 1857), 31. The term “Black Republicans” was a label used by pro-Southern Democrats to describe Republicans.

26. Republican candidate Marcus J. Parrott received 9,708 votes (57 percent) and Sanders W. Johnson received 7,232 votes, for a total of 16,940 votes cast in the election. See Election Returns—Delegates to Congress, November 8, 1859, Abstracts, Executive Department, Kansas Territory, Library and Archives Division, Kansas State Historical Society.

27. Proceedings of the Republican National Convention, Held at Chicago, May 16, 17 and 18, 1860 (n.p., n.d.), 53; Wendell Holmes Stephenson, The Political Career of General James H. Lane, vol. 3, Publications of the Kansas State Historical Society (Topeka: Kansas State Printing Plant, 1930), 59; W.C. Simons, “Lawrence Newspapers in Territorial Days,” Kansas Historical Collections, 1926–1928 17 (1928): 334; F.G. De Fontaine, History of American Abolitionism: Its Four Great Epochs (New York: D. Appleton and Co., 1861), 39.

28. John A. Martin to J.M. Winchell, September 7, 1859, box 1859, Constitutions Collection–Wyandotte, Library and Archives Division,

## BILL OF RIGHTS—ARTICLE I

**Sec. 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.**

**Sec. 8. There shall be no slavery in this State, nor involuntary servitude, unless for the punishment of crime.**

**Sec. 21. No indenture of any negro or mulatto, made and executed out of the bounds of the State, shall be valid within the State.**

As the referendum approached in the autumn of 1859, Kansas voters were expected to cast their ballots from within the large expanse of Kansas Territory, extending from the Missouri border to the Rocky Mountains and from Nebraska Territory

Kansas State Historical Society (hereafter cited as Constitutions Collection–Wyandotte).

29. Freedom’s Champion, October 29, 1859; SenGupta, For God and Mammon, 137–38; National Anti-Slavery Standard (New York), September 10, 1859; Kenneth M. Stampp, America in 1857: A Nation on the Brink (New York: Oxford University Press, 1990), 136; Weekly Western Argus (Wyandotte), December 17, 1859; Herald of Freedom, August 20, 1859.

TABLE 1  
 COUNTY TOTALS BASED ON THE PRECINCT RETURNS  
 ON THE WYANDOTTE CONSTITUTION REFERENDUM

<u>County</u>	<u>Votes For</u>	<u>Votes Against</u>
Allen	244	159
Anderson	266	80
Arapahoe	—	—
Atchison	684	581
Bourbon	464	256
Breckenridge	545	26
Brown	269	103
Butler	27	1
Chase	86	14
Clay	—	—
Coffey	430	121
Davis	25	121
Dickinson	—	—
Doniphan	743	630
Dorn	—	—
Douglas	1,442	383
Franklin	301	111
Godfroy	—	—
Greenwood	34	16
Hunter	14	0
Jackson	224	170
Jefferson	392	354
Johnson	373	377
Leavenworth	1,143	1,088
Linn	549	157
Lykins	492	295
Madison	82	4
Marshall	1	81
McGee	—	—
Morris	25	50
Nemaha	200	44
Osage	44	0
Pottawatomie	93	68
Riley	296	128
Shawnee	671	109
Wabaunsee	110	14
Wilson	—	—
Wyandotte	274	205
Woodson	—	—
TOTAL	10,543	5,746

to Indian Territory. However, meager plans had been made to ensure widespread voter participation from this vast area. These poorly laid plans led to confusion about how the referendum should be conducted and raised questions that echoed the political controversies of previous constitutional referendums.

One of the first questions surrounding the Wyandotte referendum centered on where to send the voter tallies. Just before the October 1859 vote the county canvassing boards received conflicting directives from the Democratic-led Kansas government and the Republican-led Wyandotte Constitutional Convention. The territorial legislature ordered the counties to send the tallies to the Democratic-held governor's office in LeCompton. The legislative directive was based on the statutes of Kansas Territory, which required that counties send their voter tallies "to the Governor of the Territory." The leaders of the Republican-dominated convention, however, instructed county officials to return the tallies to the convention officers at Topeka. While the statutes allowed the convention to "prescribe" the "manner and form" of the "direct vote of the qualified electors," the convention had no independent authority to direct where the referendum results should be sent. Lacking this authority, however, did not prevent the Republicans from attempting to use the instructions to gain support for the Wyandotte Constitution. John A. Martin, one of the primary Republican leaders to emerge from the convention, even attempted to "secure [Governor Samuel] Medary's co-operation in issuing the proclamation," which could have enticed the Democrats to join the Republicans in supporting the constitution.<sup>30</sup> Martin's effort failed, however, and the two conflicting proclamations were presented to local election officials.

Thus the stage was set for a controversial struggle over the outcome of another constitutional referen-

30. Kansas Chief, September 22, 1859; Emporia News, September 24, 1859; Lawrence Republican, September 22, 1859; "Constitution and State Government for State of Kansas: An Act Providing for the Formation of a Constitution and State Government for the State of Kansas," Kansas Territory General Laws (1859), 31; John A. Martin to J.M. Winchell, September 7, 1859, Constitutions Collection—Wyandotte.

dum. Noting the seriousness of the situation, the Fort Scott Democrat reported:

We published last week, two proclamations—one issued by Hugh S. Walsh, Secretary and acting Governor of the Territory of Kansas; the other by J[ames].M. Winchell and John A. Martin, President and Secretary, of the Constitutional Convention. Both of these Proclamations have direct reference to the coming election on the adoption of the Constitution framed at Wyandott [sic]. . . . The former says that “a certified abstract of the returns of the election must be transmitted, within ten days after the canvass of votes, by the hands of a sworn officer, to the Governor of the Territory at Lecompton;” the latter, that they must be transmitted “to the President of the Constitutional Convention at Topeka.[“]

Thus it will be seen that these proclamations are directly antagonistic . . . and it remains for our officers to decide which they will obey.<sup>31</sup>

Attempts were made to explain the existence of one proclamation or the other. For example, while publishing only the proclamation from Winchell and Martin, the Wyandotte Commercial Gazette reported that Governor Medary was unable to address the issue because he was absent from the territory.<sup>32</sup>

Once these conflicting sets of instructions were made public, the Republicans suggested that the governor’s proclamation might be used to influence the outcome of the referendum. Samuel C. Pomeroy, chairman of the Republican Central Committee, charged the Democratic-dominated governor’s office with “disregarding the provision of the Wyandotte Constitution which directs that the returns of the vote upon the Constitution be made to J.M. Winchell, President of the Convention, at Topeka.”<sup>33</sup> Republicans feared that if a question arose about the referendum’s validity, the Democratic-dominated Congress, which had protected Southern interests in Kansas, might throw out the antislavery constitution.

On October 4, 1859, with the problem of the two proclamations unresolved, voters went to the polls. Voter turnout was not as great as expected by some

31. Fort Scott Democrat, September 29, 1859.

32. Commercial Gazette (Wyandotte), October 1, 1859.

33. Emporia News, September 24, 1859.

TABLE 2  
GOVERNOR’S PROCLAMATION ON THE RESULTS OF  
THE WYANDOTTE CONSTITUTION REFERENDUM

<u>County</u>	<u>Votes For</u>	<u>Votes Against</u>
Allen	244	159
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Brown	269	103
Butler	27	1
Chase	—	—
Clay	—	—
Coffey	434	121
Davis	—	—
Dickinson	—	—
Doniphan	743	630
Dorn	—	—
Douglas	1,442	383
Franklin	301	111
Godfroy	—	—
Greenwood	34	16
Hunter	—	—
Jackson	224	170
Jefferson	392	354
Johnson	373	377
Leavenworth	1,143	1,088
Linn	549	157
Lykins	492	295
Madison	82	4
Marshall	—	—
McGee	—	—
Morris	25	50
Nemaha	200	44
Osage	44	0
Pottawatomie	93	68
Riley	296	128
Shawnee	671	109
Wabaunsee	110	14
Wilson	—	—
Wyandotte	274	205
Woodson	—	—
<b>TOTAL</b>	<b>10,421</b>	<b>5,530</b>

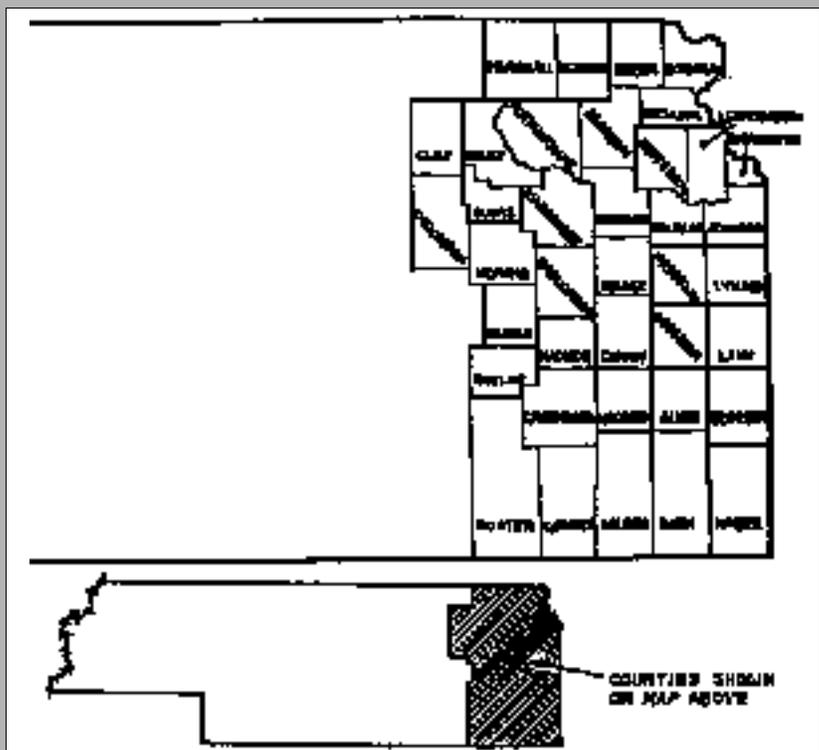
TABLE 3  
 PRECINCT RETURNS FROM THE WYANDOTTE CONSTITUTION REFERENDUM\*

<u>Location</u>	<u>For</u>	<u>Against</u>	<u>Total</u>	<u>Location</u>	<u>For</u>	<u>Against</u>	<u>Total</u>
Allen County				Neosho	46	15	61
All precincts	244	159	403	Ottumwa	71	8	79
Anderson County				Pottawatomie	18	3	21
Addington	31	5	36	Davis County			
Cresco	34	6	40	All Precincts	25	121	146
Elizabeth	11	1	12	Dickinson County		No Returns	
Garnett	108	42	150	Doniphan County			
Greeley	57	16	73	Bellemont	4	65	69
Hyatt	25	10	35	Columbia City	103	34	137
Arapahoe County				Doniphan City	42	105	147
No returns				Elwood	131	6	137
Atchison County				Geary City	48	17	65
Atchison				Gilmore	12	16	28
Ward 1	4	30	34	Highland	37	32	69
Ward 2	27	137	164	Iowa Point	74	138	212
Ward 3	21	55	76	Lafayette	6	18	24
Centre	82	46	128	Palermo	56	27	83
Grasshopper Falls	41	38	79	Petersburgh	23	0	23
Kapioma	18	10	28	Ross Stone	13	6	19
Lancaster	35	45	80	Syracuse	45	23	68
Mt. Pleasant	62	67	129	Troy	64	76	140
Shannon	267	96	363	Wathena	27	49	76
Walnut	127	57	184	White Cloud	58	18	76
Bourbon County				Dorn County		No returns	
Drywood	52	38	90	Douglas County			
Franklin	57	17	74	Big Springs	43	7	50
Freedom	70	6	76	Black Jack	63	1	64
Marion	29	39	68	Blanton	70	4	74
Marmaton	81	16	97	Clinton	200	43	243
Osage	47	0	47	Coal Creek	40	0	40
Scott (Ft. Scott)	46	112	158	Eudora	82	7	89
Timber Hill	82	28	110	Lawrence	602	65	667
Breckenridge County				Lecompton	59	196	255
Agnes City	30	5	35	Marion	46	27	73
Americus	84	5	89	Palmyra	137	9	146
Cahola	21	0	21	Willow Springs	100	24	124
Cottonwood	75	2	77	Franklin County			
Emporia	172	4	176	Centropolis	78	50	128
Forest Hill	60	1	61	Ohio	46	22	68
Fremont	54	0	54	Ottawa	50	2	52
Waterloo	49	9	58	Peoria City	24	14	38
Brown County				Peoria Township	40	19	59
Claytonville	57	62	119	Pottawatomie	63	4	67
Irving	125	10	135	Godfroy (Godfrey) County		No Returns	
Lochrane (Lochlane)	27	24	51	Greenwood County			
Walnut Creek	60	7	67	All precincts	34	16	50
Butler County				Hunter County			
Chelsea	27	1	28	El Dorado	14	0	14
Chase County				Jackson County			
All Precincts	86	14	100	Douglas Township			
Clay County		No returns		Cedar Creek	26	8	34
Coffey County				Point Pleasant	29	8	37
Avon	90	18	108	Rochester	43	17	60
Burlington	92	1	93	Franklin Township			
California	44	10	54	Holton	28	99	127
LeRoy	69	66	135				

TABLE 3 (CONT'D.)

<u>Location</u>	<u>For</u>	<u>Against</u>	<u>Total</u>	<u>Location</u>	<u>For</u>	<u>Against</u>	<u>Total</u>
Jefferson Township				Madison County			
Groomer Creek	38	0	38	Centre	44	2	46
New Brighton	34	20	54	Hartford	19	2	21
Soldier Creek	26	18	44	Madison	19	0	19
Jefferson County				Marshall County			
Grasshopper Falls	113	57	170	Marysville- Palmetto	1	81	82
Jefferson	47	68	115	McGee County		No returns	
Kaw	12	19	31	Morris County			
Kentucky	14	91	105	Clark's Creek	11	7	18
Osawkee	33	45	78	Council Grove	14	43	57
Oskaloosa	120	70	190	Nemaha County			
Rock Creek	53	4	57	Capioma	11	7	18
Johnson County				Granada	32	19	51
Aubrey	18	28	46	Home	19	6	25
Gardner	60	17	77	Nemaha	29	0	29
Lexington	46	42	88	Red Vermillion	27	3	30
McCamish	75	23	98	Richmond	25	0	25
Monticello	1	55	56	Rock Creek	36	9	45
Olathe	67	81	148	Valley	21	0	21
Oxford	9	27	36	Osage County			
Shawnee	65	84	149	Superior	44	0	44
Spring Hill	32	20	52	Pottawatomie County			
Leavenworth County				Blue	7	17	24
Alexandria	44	55	99	Louisville	24	18	42
Delaware	63	70	133	Pottawatomie	18	12	30
Easton	43	85	128	Saint George	34	17	51
Kickapoo Township				Shannon	10	4	14
Kickapoo City	8	81	89	Riley County			
Widow Cody	35	35	70	Freemont	17	3	20
Leavenworth City				Indiana	19	1	20
Ward 1	215	210	425	Junction City	58	40	98
Ward 2	384	226	610	Kent	10	0	10
Ward 3	188	117	305	Madison	5	15	20
Ward 4	116	120	236	Manhattan	144	45	189
Stranger	47	89	136	Ogden	43	24	67
Linn County				Shawnee County			
Centerville	61	24	85	Auburn	144	12	156
Liberty	22	0	22	Tecumseh	116	59	175
Mound City	172	20	192	Topeka	304	0	304
Paris	90	82	172	Unidentified			
Potosi	86	7	93	Precinct(s)	107	38	145
Scott	71	15	86	Wabaunsee County			
Valley	47	9	56	Alma	31	3	34
Lykins County				Wabaunsee	49	8	57
Miami	33	21	54	Wilmington	30	3	33
Middle Creek	13	29	42	Wilson County		No returns	
Mound	27	2	29	Wyandotte County			
Osage	46	43	89	Quindaro	64	62	126
Osawatomie	185	2	187	Wyandotte	210	143	353
Paola	52	85	137	Woodson County		No returns	
Richland	15	24	39				
St. Marysville	21	43	64				
Stanton	66	19	85				
Sugar Creek	23	13	36				
Wea	11	14	25				

\* Based on Election Returns—Wyandotte; W.H. Jenkins to John A. Martin, October 7, 1859, Election Returns; Kansas State Record, November 5, 1859; Herald of Freedom, October 8, 15, 1859; Kansas Press, October 10, 31, 1859; Emporia News, October 8, 15, 1859.



Kansas territorial counties

sympathies. For example, several of the old proslavery settlements, such as Kickapoo and Easton, rejected the constitution. Delaware Township, which had instructed its Wyandotte Constitutional Convention delegate to support a proslavery clause at the convention, overwhelmingly rejected the document at the polls. In fact, Leavenworth County, which only two years later provided some support for the Confederacy, reported that half of its precincts rejected the constitution. Morris County, which was reported by the Topeka Kansas Press to have held “no Republicans” in 1859, joined Johnson County as one of only two counties to have officially rejected the constitution.<sup>36</sup> These communities, however, serve to illustrate only a portion of the pro-Southern political opposition to the Wyandotte Constitution.

Table 1, which shows that only twenty-seven of the thirty-nine existing counties participated in the referendum, illustrates that a

poll watchers. As a result the Fort Scott Democrat reported that the constitution passed “more by default than otherwise.”<sup>34</sup> On November 1, 1859, Governor Medary declared the final official vote on the Wyandotte Constitution to be 10,421 votes in favor and 5,530 votes against the constitutional question, for a total of 15,951 official votes cast in the referendum.<sup>35</sup> Based on the governor’s proclamation, 35 percent of the voters opposed the Wyandotte Constitution. While a variety of issues influenced some voters to oppose the document, the most notable opposition to the constitution can be attributed to pro-Southern

significant number of counties were excluded from the referendum. Governor Medary did not report any voter returns from twelve counties, not including the newly formed Rocky Mountain counties.<sup>37</sup> Prior to the governor’s proclamation (Table 2), however, at least five newspapers published the returns from four of the missing counties. These counties include Chase, Davis, Hunter, and Marshall. Chase and Hunter Counties reportedly approved the Wyandotte Constitution, while Davis and Marshall Counties

34. Appendix to the Congressional Globe, 36th Cong., 1st sess., 1860, 213; Herald of Freedom, October 8, 1859; Missouri Republican (St. Louis), October 6, 1859; New York Daily Tribune, November 3, 1859; Fort Scott Democrat, October 13, 1859; Kansas National Democrat (Leocompton), October 13, 1859. A census taken in 1859 reported that the number of eligible voters in Kansas Territory exceeded twenty thousand. See Kansas Territory Council Journal, Special Session, 1860, 136–40.

35. Election Returns—Adoption of Wyandotte Constitution, October 4, 1859, Executive Department, Kansas Territory, Library and Archives Division, Kansas State Historical Society (hereafter cited as Election Returns—Wyandotte); Kansas Press (Council Grove), November 28, 1859; Freedom’s Champion, November 5, 1859; Kansas State Record (Topeka), November 5, 1859; Herald of Freedom, November 5, 1859; Emporia News, November 12, 1859; Kansas National Democrat, November 3, 1859.

36. Election Returns—Wyandotte; Cutler and Andreas, History of the State of Kansas, 1:419; Leavenworth Daily Conservative, July 18, 1861; William H. Mackey, “Looking Backwards,” Kansas Historical Collections, 1907–1908 10 (1908): 645; Spring, Kansas: The Prelude to the War for the Union, 28; Kansas Press, April 16, 1860.

37. Arapahoe County, which comprised much of the eastern half of present-day Colorado, was one of the largest and least populated counties to be excluded from the referendum on the Wyandotte Constitution. In 1859 the territorial legislature transformed the Rocky Mountain portion of Arapahoe County into the new counties of Broderick, El Paso, Fremont, Montana, and Oro. See George W. Martin, “The Boundary Lines of Kansas,” Kansas Historical Collections, 1909–1910 11 (1910): 61. The composition of counties and county names in 1859 is significantly different than the county makeup today. For a discussion on the county makeup in 1859, see Helen G. Gill, “The Establishment of Counties in Kansas,” Kansas Historical Collections, 1903–1904 8 (1904): 451–52.

were reported to have rejected the document.<sup>38</sup> Davis and Marshall Counties present intriguing examples of how some pro-Southern political opposition to the constitution was excluded (Table 3).

The view that pro-Southern politics was largely responsible for the rejection of the Wyandotte Constitution by Davis County voters is supported by the territorial history of the county. Although Davis County settlers represented a mix of political views, Junction City, the county seat, was home to a number of pro-Southern settlers. Even as late as 1860, according to the *Emporia News*, Junction City held the reputation as unwavering in its support of the proslavery Lecompton Constitution. Having been named in honor of Secretary of War Jefferson Davis, later the president of the Confederate States of America, Davis County maintained a characteristic pro-Southern population until the Civil War. For example, in 1861 the forced removal of a pro-Confederate flag that flew over Junction City resulted in a civil disturbance and the departure of some residents for the Confederacy.<sup>39</sup>

Marshall County presents one of the clearest examples of how pro-Southern politics influenced opposition to the Wyandotte Constitution. Newspaper reports that Marshall County voters rejected this constitution are substantiated by a letter from W.H. Jenkins, a county election officer. On October 7, 1859, Jenkins wrote from Palmetto that the county's returns were being sent by Deputy Sheriff Otis D. Prentis to territorial officials. While the results of the vote were not included in the letter, Marysville was identified as the only precinct in the county that participated in

the referendum. Jenkins also reported that the "Black Republicans" returned only one vote in the referendum. The use of the term "Black Republicans" in describing supporters of the Wyandotte Constitution clearly suggests that Jenkins was a Southern Democrat. The pro-Southern tone of the letter corresponds to the fact that both Jenkins and Prentis helped found the proslavery Palmetto community, which adjoined Marysville. As a result of comparing the October 15, 1859, *Herald of Freedom* report of a majority of eighty votes having been cast against the constitution with the letter from Jenkins, Marshall County appears to have received one vote for the Wyandotte Constitution and eighty-one votes against the document. Such an overwhelming rejection of a pro-Northern constitution should not be surprising considering that pro-Southern candidates in Marshall County elections typically received broad voter support.

Pro-Southern influence continued into the early 1860s as evidenced by the *Topeka Kansas State Record*, which in 1861 reported "from reliable sources" that "the citizens of Marysville and Marshall County have seceded from the Union."<sup>40</sup> One of the last opposition voices was extinguished in 1862 when Union soldiers destroyed the *Marysville Gazette*, a pro-Southern newspaper.<sup>41</sup>

The exclusion of such counties as Marshall from official participation in the referendum partly resulted from the competitive struggle between the Republicans and Democrats. This competition interfered with Lecompton's ability to properly conduct and accurately report the results of the referendum. One example of how this struggle resulted in a less-than-flawless referendum can be seen with the official

38. *Herald of Freedom*, October 15, 1859; *Emporia News*, October 8, 15, 1859; *Kansas Press*, October 10, 31, 1859; *Kansas National Democrat*, October 13, 1859; *Elwood Free Press*, October 22, 1859. Chase County returned 86 votes for the constitution and 14 votes against the document. Davis County (later Geary County) returned 25 votes for the constitution and 121 votes against the document. Hunter County returned 14 votes for the constitution and 0 votes against the document; Hunter County later became Cowley County and much of Butler County, as well as fringe areas of Sumner, Sedgwick, Greenwood, Elk, and Chautauqua Counties. Marshall County returned 1 vote for the constitution and 81 votes against the document.

39. Cutler and Andreas, *History of the State of Kansas*, 2:1001, 1006; George W. Martin, "The George Smith Memorial Library," *Kansas Historical Collections*, 1913–1914 13 (1915): 405; *Emporia News*, March 3, 1860.

40. W.H. Jenkins to John A. Martin, October 7, 1859, Election Returns, box 11, Executive Department, Territory of Kansas, Library and Archives Division, Kansas State Historical Society (hereafter cited as Election Returns); *Herald of Freedom*, October 15, 1859; D.W. Wilder, *The Annals of Kansas* (Topeka: Kansas Publishing House, 1886), 213; Cutler and Andreas, *History of the State of Kansas*, 2:917; *Kansas State Record*, January 5, 1861; "Extinct Geographical Locations," *Kansas Historical Collections*, 1911–1912 12 (1912): 485.

41. *Wyandotte Gazette*, August 23, 1862; *Big Blue Union* (Marysville), August 23, 1862. The *Marysville Gazette*, which was also known as the *Constitutional Gazetteer*, was founded in 1862 by P.H. Peters. See Emma E. Forter, *History of Marshall County: Its People, Industries and Institutions* (Indianapolis: B.F. Bowen and Co., 1917), 417.

Coffey County vote. When comparing the governor's official report with the Coffey County Board of Canvassers report, it is clear that the governor's office overreported the Coffey County vote for the Wyandotte Constitution by four votes. Although the difference of four votes would not have changed the referendum's outcome, such a problem illustrates the failure of the opposing political leadership to cooperate in catching such a mistake. The Republican versus Democratic competition also influenced the local level. For example, the Lecompton Kansas National Democrat accused Republican election officials in Lawrence of soliciting a "fraudulent" pro-Wyandotte Constitution vote from a business traveler and suggested that other "such votes" might have been "put into the ballot boxes in the Territory."<sup>42</sup>

**T**he cost of the suspicion that existed between the Republican leadership and the moderately pro-Southern governor's office also can be seen in the outcome of having two competing proclamations. When it came time to send in the voter tallies from the referendum, some county officials attempted to circumvent the political conflict by sending one set of returns to Lecompton and another set to James Winchell and John Martin in Topeka. Other county officials made their decision about where to send the returns based on their political sympathies. For example, although Lecompton was generally recognized as the "capital of the Territory," pro-Northern Kansans resented Lecompton as "the strength and virulence of the pro-slavery rule in Kansas." As a result, some Republican county officials chose to send their county returns to Winchell and Martin, who represented the pro-Northern future of Kansas.<sup>43</sup>

Upon the completion of the Wyandotte referendum, Winchell and Martin took their set of voter re-

turns to Lecompton for the purpose of "comparing them" with the returns received by Governor Medary. In a letter to Winchell, however, Medary complained about the brevity of the meeting, stating, "You and Mr. Martin were only present here on Monday week about two hours and that time was occupied in opening the poll books returned to this office and comparing them with a table of returns you brought with you."<sup>44</sup> The brevity of this meeting is significant when considering that the final report was in error regarding the Coffey County returns, nearly one-third of the counties were absent from the official results, and all returns were handwritten and failed to follow a common format. The Doniphan County returns even included changes and crossed-out lines that switched the columns reporting the tallies, thereby changing the Doniphan County returns.<sup>45</sup> It is unknown whether the returns were altered by Doniphan County officials or modified as a result of comparing the two sets of returns in Lecompton.

The existence of two opposing sets of returns opened the distinct possibility that the list of counties and tallies would not match and might even heighten distrust between the Democrats and Republicans. Indeed, there is reason to believe that the list of counties contained in the two sets of returns differed. This is based on correspondence between various officials that highlights the problem of having two sets of conflicting proclamations. For example, in an attempt to ensure that the anti-Wyandotte Constitution majority vote from Marshall County was counted, Jenkins commenced to have the county returns sent to both Martin and Medary. Jenkins sent "by special messenger the sealed official vote for Marshall County" to Martin. However, Jenkins pointed out in a letter to Martin, "The Probate Judge expect's [sic] that his [returns] may not [be] issued until I reach Le Compton [sic] as he is at present absent from the County."<sup>46</sup> Ev-

42. Election Returns—Wyandotte; Kansas National Democrat, October 13, 1859.

43. Shalor Winchell Eldridge, *Recollections of Early Days in Kansas*, vol. 2, Publications of the Kansas State Historical Society (Topeka: Kansas State Printing Plant, 1920), 134; Robert W. Johannsen, "The Lecompton Constitutional Convention: An Analysis of Its Membership," *Kansas Historical Quarterly* 23 (Autumn 1957): 231; Andrew Stark, ed., *Kansas Annual Register for the Year 1864* (Leavenworth: State Agricultural Society, 1864), 144.

44. Samuel Medary to J.M. Winchell, November 9, 1859, Wyandotte Constitutional folder, box 5, Correspondence and Miscellaneous Documents, Executive Department, Kansas Territory, Library and Archives Division, Kansas State Historical Society (hereafter cited as Wyandotte Correspondence).

45. Election Returns—Wyandotte.

46. W.H. Jenkins to John A. Martin, October 7, 1859, Election Returns.

idently Jenkins viewed the returns to be sent to Lecompton as the legal set of returns that required the judge's signature. Since the Marshall County returns were not included in the governor's proclamation, it is apparent that the probate judge was unsuccessful in sending the Marshall County returns to Lecompton. It is unknown whether Martin actually received the returns that Jenkins dispatched to him.

**L**eavenworth County serves as another example of plans to send separate returns to both Lecompton and Topeka. In a letter to Winchell Leavenworth County Clerk H.C. Fields wrote that the "County Board of Supervision" was composed of Democrats, who sent the returns only to the governor's office in Lecompton. As a result, Fields added in his letter to Winchell, "I took it upon myself to make a copy and sent it to you."<sup>47</sup>

Similarly, because of his affiliation with the Republican Party, J.H. Signor, the Allen County clerk, sent his county's returns to Winchell and Martin. Signor stated that the Allen County returns were being sent by U.S. mail because no one could be found to deliver them. Regarding this unofficial method for delivering the returns, Signor wrote to Winchell and Martin, "I have no particular fear that they will be thrown out because of informality by you, but the other Board of Canvassers may." Presumably the "other" board refers to the governor's office. The reason for Signor's decision to send the returns to Winchell and Martin instead of to Lecompton becomes clear in the closing sentence of his letter when he proudly reports that Allen County is "thoroughly & permanently Republican."<sup>48</sup> Since the Allen County returns were reported by Lecompton, Medary appears to have accepted the tallies.

Efforts to comply with the dueling instructions on where to send the tallies resulted in some returns being received late or never being received. Many other potential votes were lost due to a variety of reasons stemming from the longstanding pro-Northern

versus pro-Southern political struggle and the resulting poor planning by all factions. This included voter apathy arising from the seemingly endless series of antislavery versus proslavery constitutional referendums, the exclusion of selected "deficient" votes by some county canvassing boards, and little or no attempt to conduct the referendum in some counties because territorial officials and political party leaders failed to cooperate in establishing canvassing boards.<sup>49</sup> The failure to include some of the more remote counties in the referendum is particularly noticeable. Following the referendum the *Herald of Freedom* questioned whether the "Western Territory" had even been allowed to vote. Actually, many voters in the Rocky Mountain counties of Kansas Territory wanted nothing to do with the pro-Southern versus pro-Northern political struggle or the Wyandotte referendum, since any such participation would "tie ourselves to the tail of 'bleeding Kansas.'"<sup>50</sup>

Disregarding the absence of a number of counties, the Republicans proclaimed a victory with the passage of the Wyandotte Constitution. With this victory in place, the free-state majority finally saw its vision for Kansas begin to unfold. This burgeoning pro-Northern vision also was recognized among pro-Southern Kansans, including the few remaining Kansas slaveowners. Even though the passage of the antislavery Wyandotte Constitution did not immediately end slavery in Kansas, concern about the future status of slavery resulted in some slaves being removed from the territory. Seemingly in response to the Wyandotte referendum, for example, one Jefferson County slaveowner removed all twenty-seven of his slaves to Texas in late 1859.<sup>51</sup>

Following the referendum the Wyandotte Constitution became a document in limbo, awaiting con-

49. Robert Morris Peck, "Recollections of Early Times in Kansas Territory," *Kansas Historical Collections*, 1903-1904 8 (1904): 506; *Kansas Territory Council Journal*, 1860, 24; *Kansas Territory House Journal*, 1860, 15-16, 426.

50. *Arkansas State Gazette* (Little Rock), October 1, 1859; *Herald of Freedom*, October 29, 1859; *Lawrence Republican*, August 11, 1859; Geo. M. Willing to Lewis Cass, December 28, 1859, no. 1, Colorado series, State Department Territorial Papers, microfilm M3, National Archives, Washington, D.C.; *Rocky Mountain News* (Denver), October 27, 1859.

51. Charles Estabrook Cory, "Slavery in Kansas," *Kansas Historical Collections*, 1901-1902 7 (1902): 241.

47. H.C. Fields to J.M. Winchell, October 28, 1859, *ibid.*

48. J.H. Signor to J.M. Winchell and John A. Martin, October 25, 1859, *ibid.*



Cherokee Nation and not Kansas. In March 1860 the Fort Scott Democrat reported that "'Old Man Hathaway,' who lives on Drywood, near the State Line, has, in order to save himself from being driven off by the Indians . . . married a Cherokee woman." Hathaway was not alone, as other Drywood settlers also married into the Cherokee Nation in order to stay in the Neutral Lands.<sup>56</sup>

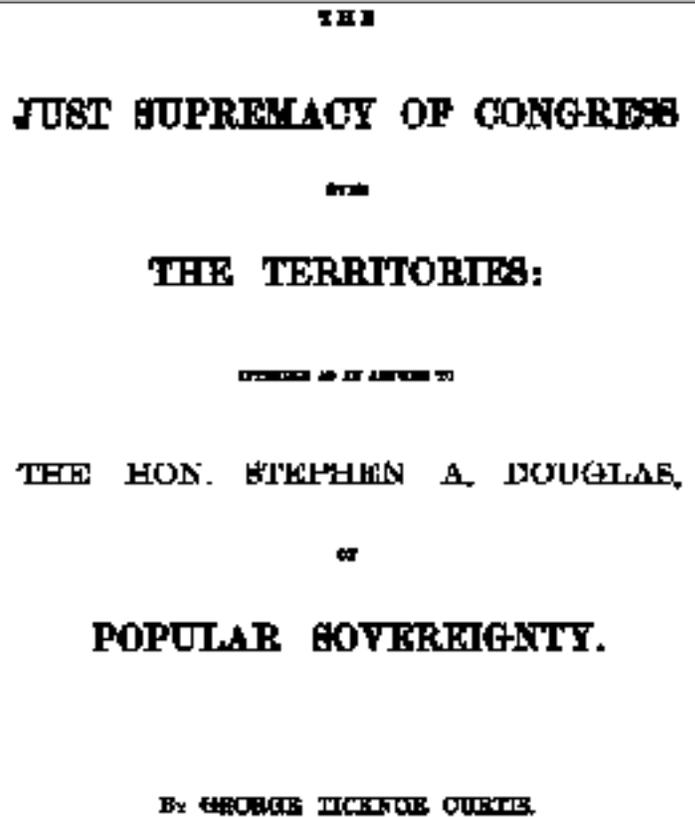
Cherokee efforts to remove all Neutral Lands squatters failed, largely due to conflicting political interests among federal officials. Although gaining the support of Democratic senator Albert Gallatin Brown of Mississippi, who became an outspoken ally of the Cherokee Nation in Congress, Cherokee opposition to the inclusion of the Neutral Lands in the "free state" of Kansas would also be unsuccessful.<sup>57</sup> In focusing on Southern Democratic support in Congress, however, the Cherokee Nation failed to lobby its position among Kansas Democrats. Kansas Democrats also failed to join the Cherokee Nation in challenging Republican political successes, especially concerning the illegal votes cast at Drywood. The Democrats opposing the Wyandotte Constitution might have succeeded in throwing out the pro-Wyandotte majority vote cast at Drywood had they referred to a decision made by acting Governor James W. Denver on February 12, 1858, that determined the territorial government had no "jurisdiction over the Indian country" in Kansas.<sup>58</sup>

The failure of Cherokee efforts to limit the impact of the Wyandotte Constitution upon the Neutral Lands coincided with a similar yet detached political loss among pro-Southern Democrats. As a result the Republicans were left in a favorable position to push ahead with their own agenda of using the Wyandotte Constitution to strengthen their grip on Kansas. The outcome of the referendum heightened the Republican zeal of this vision, prompting their leaders to be-

56. Fort Scott Democrat, March 29, 1860; Robley, *History of Bourbon County, Kansas*, 155.

57. Appendix to the *Congressional Globe*, 210.

58. Kansas Territory House Journal, 1861, 410–11. An 1871 House committee report stated that despite their illegal status the Neutral Lands squatters both "paid taxes and voted as early as 1859." See Cherokee Neutral Lands in Kansas, *Minority Report*, 12. In accepting tax money from the squatters, some local government officials apparently accepted the illegal Neutral Lands settlers as Kansas residents.



have as though they were already in control. For example, ignoring Lecompton, the Republicans continued to make their own proclamations, including the elections of November and December 1859.<sup>59</sup>

Despite the Republican victory found in the passage of the Wyandotte Constitution, the pro-Southern versus pro-Northern political struggle persisted. Recognizing that the political struggle was not settled by the referendum, urgent attempts were initiated either to entrench pro-Northern politics or to protect slavery, the most threatened of Southern institutions in Kansas. Two of these attempts, representing opposing Northern and Southern political interests, occurred within weeks of the Wyandotte referendum.

During the winter of 1859–1860 Senator Albert Gallatin Brown, a longtime defender of Southern political interests in Kansas Territory, worked on a congressional bill called the "Protection of Slave Proper-

59. Samuel Medary to J.M. Winchell, *Wyandotte Correspondence*; Medary to Winchell, November 9, 1859, *ibid.*

## THE ISSUE FAIRLY PRESENTED.

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### THE SENATE BILL

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## THE ADMISSION OF KANSAS AS A STATE

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### DEMOCRACY,

LAW, ORDER, AND THE WILL OF THE MAJORITY OF  
THE WHOLE PEOPLE OF THE TERRITORY,

---

### BLACK REPUBLICANISM,

OBSCURATION, REVOLUTION, ANARCHY, AND THE WILL  
OF A MENAGERIE MINORITY.

---

PREPARED BY ORDER OF THE COMMITTEE ON TERRITORIES, U. S. SENATE.

ty in Kansas." The purpose of the bill was to make it a felony for anyone to interfere with slavery in Kansas or to speak against "the right to hold slaves in the Territory of Kansas." Submitted to Congress on February 23, 1860, the proposed legislation eventually was sent to the Senate Committee on Territories, where it remained until June 11, 1860, when the committee "asked to be discharged from its further consideration."<sup>60</sup> The refusal of the committee to recommend any action on the proposed bill essentially

60. "Letter from Senator Brown," *Eastern Clarion* (Paulding, Miss.), April 27, 1859; Senate, *An Act to Punish Offences Against Slave Property in the Territory of Kansas*, prepared by Albert Gallatin Brown, 36th Cong., 1st sess., February 23, 1860, S. Rept. 203, serial 1039; *Congressional Globe*, 36th Cong., 1st sess., 1860, 861, 2744; *Annual Report of the American Anti-Slavery Society, By the Executive Committee, For the Year Ending May 1, 1860* (New York: American Anti-Slavery Society, 1861), 6.

purged it from Congress. In response the Fort Scott Democrat concluded that the whole affair was irrelevant because Kansas Territory will do "as it pleases" on the slavery question.<sup>61</sup>

At the same time that Senator Brown was attempting to deflate the pro-Northern Wyandotte constitutional victory, some members of the Kansas territorial legislature attempted to reinforce the success of the referendum and accelerate the free-state movement by adopting a bill called an "Act to Prohibit Slavery in Kansas." The bill was supported by the "Douglas Democrats" and approved by the Republican majority in the legislature, but Governor Medary vetoed it, stating that "it emanates from a body that has not the essentials necessary to carry it into effect." The veto was largely unpopular except among "that portion of the people of Kansas who swear by the Dred Scott decision."<sup>62</sup> However, a majority in the legislature overrode Medary's veto, and the bill technically was made law in February 1860. Even though the law had been adopted, it was not generally enforced. The *Kansas National Democrat* pointed out that the law had less to do with abolishing slavery than in furthering pro-Northern "political capital" on the heels of the Wyandotte referendum. The newspaper report added that the territorial legislature had "not provided any penalty for a violation of their law" and suggested that the law was designed to "keep the ultra-Abolitionists in a good humor." The report concluded by stating that "some slaveholders and pro-slavery" members of the Kansas territorial legislature even supported the bill, hoping it would be adopted so that the Supreme Court would rule it unconstitutional under the Dred Scott decision. In place of the Supreme Court, however, a territorial court ruled that the antislavery law was unconstitutional. This action could not have been a surprise to Republicans or Democrats because some members of the territorial judiciary had earlier stated they would "protect slav-

61. *Fort Scott Democrat*, June 30, 1860.

62. *Kansas Territory House Journal*, 1860, 466; "Kansas," *The Tribune Almanac and Political Register* (New York: Greeley and McElrath, 1860), 34; *Emporia News*, March 10, 1860.

ery” because any “territorial law upon the subject would be null and void.”<sup>63</sup>

Outside Congress pro-Southern Democrats found that the territorial courts of justice served as the best places for airing their grievances with Republicans during the final territorial period. One prominent court case occurred on January 4, 1861, when the district court heard a case argued that involved a runaway named Fanny who was “claimed by Horace Haley as a slave.” Haley’s efforts to recover Fanny initially had been refused by local authorities on the basis of the 1860 law abolishing slavery. When the case went to court, however, Judge John Pettit ruled in favor of Haley, stating that the “law prohibiting slavery in Kansas was unconstitutional.” Pro-Southern Kansas Democrats relied upon decisions of this type to undermine complete Republican control of Kansas Territory. Such efforts were successful, as illustrated by Republican frustration over failing to completely eradicate slavery before statehood. London’s Anti-Slavery Reporter complained in 1860 that in Kansas, “there has not been any attempt . . . to interfere . . . with the right of the master.” Only three days before statehood was granted, the Kansas State Record reported that the slavery issue in Kansas was still unresolved and asked, “When shall the end of these things be?”<sup>64</sup>

As the last days of the territorial period faded, however, Kansans holding pro-Southern political sympathies sensed that their influence was seriously threatened. Recognizing this, the governor’s office made one last effort to protect slavery. In January 1861, following Governor Medary’s resignation, Acting Governor George M. Beebe urged the territorial legislature to repeal the 1860 law abolishing slavery.<sup>65</sup>

63. Senate, Message From the President of the United States, 36th Cong., 2d sess., S. Doc. 1, serial 1078; Fort Scott Democrat, February 23, 1860; Nebraska Advertiser (Brownsville), February 23, 1860; Kansas National Democrat (Lecompton), February 9, 1860; Kansas Press (Cottonwood Falls), August 29, 1859.

64. Fort Scott Democrat, February 2, 1861; Emporia News, January 5, 1861; Anti-Slavery Reporter, Under the Sanction of the British and Foreign Anti-Slavery Society (London), February 1, 1860, 39; Kansas State Record, January 26, 1861; Wilder, The Annals of Kansas, 307.

65. Commercial Gazette, January 19, 1861; Emporia News, January 19, 1861; Kansas Territory House Journal, 1861, 49.

**VETO MESSAGE**  
-  
**GOVERNOR MEDARY,**  
- -  
**BILL PROHIBITING**  
**SLAVERY IN KANSAS.**

EXECUTIVE OFFICE, K. T., }  
February 9, 1861. }

To the Honorable, the House of Representatives:

Gentlemen:—I have received the bill entitled “An Act to Prohibit Slavery in Kansas,” and not satisfied that it accords with what the title imports, I return it with objections.

However, Beebe’s attempt to protect slavery in Kansas was too late.

By this time the only significant opposition to the antislavery Wyandotte Constitution came from “pro-slavery ruffians” and “members of the old pro-slavery secret order” in southeastern Kansas.<sup>66</sup> Most earlier Democratic opposition to the constitution had fallen silent as attention diverted to the impending national crisis to be played out in the Civil War. When statehood day arrived on January 29, 1861, Kansas became a free Northern state under the Wyandotte Constitution. Although attaining statehood did not eliminate the remaining pockets of Southern sympathizers in Kansas, the Republican-led state government would show little tolerance for the expression of pro-Southern views. Regarding the most embattled Southern institution, in March 1861 Governor Charles Robinson brushed aside the concern that slaves might still be found in Kansas by stating that any such question would be for “the Judiciary to decide” under the Wyandotte Constitution.<sup>67</sup>

66. J.N. Holloway, History of Kansas from the First Exploration of the Mississippi Valley to Its Admission Into the Union (Lafayette, Ind.: James, Emmons and Co., 1868), 573; Commercial Gazette (Wyandotte), November 24, 1860; Liberator, January 4, 1861.

67. Kansas House Journal, March 1861, 36.